

Exhibit D

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING, INC, a Case No: 3:19-cv-05711
California corporation, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

**DEFENDANT'S OBJECTIONS AND
RESPONSES TO PLAINTIFF'S FIRST
SET OF REQUESTS FOR PRODUCTION**

Date Action Filed: September 11, 2019

TOTAL MERCHANT SERVICES, LLC., a
Delaware limited liability company,

Defendant.

Defendant, TOTAL MERCHANT SERVICES, LLC ("Defendant" or "TMS"), by and
through undersigned counsel, hereby files its responses and objections to the First Set of Requests
for Production ("Requests") dated December 23, 2019, and served by Plaintiff, ABANTE
ROOTER AND PLUMBING, INC. ("Plaintiff"), and states as follows:

PRELIMINARY STATEMENT

The following responses to the Requests (the "Responses") are made solely for the purpose
of this action. TMS has not completed its investigation of the facts relating to this case, discovery

1 The objections that apply to this Request continue as follows:

2 TMS objects to this Request as argumentative to the extent the Request purports to assume
3 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to
4 the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase
5 “sufficient to Identify” as vague and ambiguous. TMS further objects to this Request and its
6 inclusion of “All Documents” as overly broad and unduly burdensome on its face. TMS further
7 objects to the definition of the term “You” as set forth in General Objection C, *supra*. TMS further
8 objects to the capitalized term “Your” as vague and ambiguous, particularly where, as here, the
9 capitalized term is not defined by the Requests.

10
11 **REQUEST NO. 22:** Of the Persons identified in the Documents produced in response to Request
12 to Produce No. 21 above, all Documents sufficient to Identify any Persons who requested not to
13 be called.

14 **ANSWER:** Subject to and without waiving the following objections, TMS did not produce any
15 Documents in response to Request No. 21. Accordingly, TMS is not in possession of documents
16 responsive to this Request.

17 The objections that apply to this Request continue as follows:

18 TMS objects to this Request as argumentative to the extent the Request purports to assume
19 certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to
20 the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase
21 “sufficient to Identify” as vague and ambiguous. TMS further objects to this Request and its
22 inclusion of “all Documents” as overly broad and unduly burdensome on its face.

23
24 **REQUEST NO. 23:** Of the Persons identified in the Documents produced in response to Request
25 to Produce No. 22 above, all Documents sufficient to Identify phone numbers You caused (or a
26 third party acting on Your behalf or for Your benefit caused) to be called at least once more than
27 thirty (30) days after the Person requested to no longer be called.

ANSWER: Subject to and without waiving the following objections, TMS did not produce any Documents in response to Request No. 22. Accordingly, TMS is not in possession of documents responsive to this Request.

The objections that apply to this Request continue as follows:

TMS objects to this Request as argumentative to the extent the Request purports to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase “sufficient to Identify” as vague and ambiguous. TMS further objects to this Request and its inclusion of “all Documents” as overly broad and unduly burdensome on its face. TMS further objects to the definition of the term “You” as set forth in General Objection C, *supra*. TMS further objects to the capitalized term “Your” as vague and ambiguous, particularly where, as here, the capitalized term is not defined by the Requests. TMS further objects to the misstatement of the law contained in this Request.

REQUEST NO. 24: For all Persons Identified in Documents produced in response to Request No. 23 above, all Documents sufficient to Identify all such Persons who You caused (or a third party acting on Your behalf or for Your benefit caused) to be called for the same purpose You caused (or a third party acting on Your behalf or for Your benefit caused) Plaintiff to be called using the Dialing Equipment that was used to call the Plaintiff.

ANSWER: Subject to and without waiving the following objections, TMS did not produce any Documents in response to Request No. 23. Accordingly, TMS is not in possession of documents responsive to this Request.

The objections that apply to this Request continue as follows:

TMS objects to this Request as argumentative to the extent the Request purports to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to the extent it calls for a legal conclusion and speculation. TMS further objects to the phrase “sufficient to Identify” as vague and ambiguous. TMS further objects to this Request and its

inclusion of “all Documents” as overly broad and unduly burdensome on its face. TMS further objects to the respective definitions of the terms “Dialing Equipment” and “You” as set forth in General Objections B & C, *supra*. TMS further objects to the capitalized term “Your” as vague and ambiguous, particularly where, as here, the capitalized term is not defined by the Requests.

REQUEST NO. 25: All contracts or written understandings between You and Triumph Merchant Solutions.

ANSWER: TMS objects to this Request as irrelevant, not proportional to the needs of this case, and overly broad in that it is not limited in scope, particularly, where, as here, TMS’s business relationship with “Triumph Merchant Solutions,” if any at all, including “all” of TMS’s contracts with “Triumph Merchant Solutions,” is not only not at issue but also includes subject matters unrelated to the TCPA. TMS further objects to the phrase “written understandings” as vague and ambiguous. TMS further objects to the definition of the term “You” as set forth in General Objection C, *supra*.

REQUEST NO. 26: All Communications between You and Triumph Merchant Solutions regarding the placement of telemarketing calls on Your behalf or for Your benefit.

ANSWER: TMS objects to this Request as irrelevant, not proportional to the needs of this case, and overly broad in that it is not limited in scope, particularly, where, as here, TMS’s business relationship with “Triumph Merchant Solutions,” if any at all, is not at issue. TMS further objects to this Request as argumentative to the extent the Request purports to assume certain facts or otherwise poses mere allegations as fact. TMS further objects to this Request to the extent it calls for a legal conclusion and speculation. TMS further objects to this Request and its inclusion of “All Communications” as overly broad and unduly burdensome on its face. TMS further objects to the respective definitions of the term “You” as set forth in General Objection C, *supra*. TMS further objects to the capitalized term “Your” as vague and ambiguous, particularly where, as here, the capitalized term is not defined by the Requests.